IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

SECOND APPEAL NO. 457 OF 2005

Balu Dawal Ahire & Ors..... ... Appellants.

Versus

Mangala Parashram Hire..... Respondent.

Mr. P. N. Karlekar for the Appellants.

Mr. M. M. Sathaye for the Respondent.

CORAM : ANOOP V. MOHTA, J.

DATED : 1ST DECEMBER, 2005.

P.C.:

Heard learned Counsel appearing for the parties.

2. The respondent / plaintiff has filed a suit for injunction against the appellants / defendants. After considering the rival contentions the suit was decreed. The appellate court by an order dated 13th February, 2002, however, allowed the appeal and resultantly after setting aside the impugned judgment and decree passed by the trial court, decreed the suit for injunction. The defendants were thereby

restrained by an order of permanent injunction from
causing obstruction to plaintiff’s use of the suit way as an access to her land and also restrained the defendants from causing obstruction to plaintiff’s possession over the suit land.

3. There is no dispute and as borne out from the record that the right of way which they are talking about is a Government piece of land. The appellants / defendants have admittedly encroached upon the land of Government and are in possession. The plaintiff, as contended and remained undisputed, has been using the said strip of land to approach her field since long. In this background, there is no question of obstruction by any person for using the such small piece of land specially in the present case, if it belongs to the Government.

4. In this background, the appellate court in a suit filed by the plaintiff / respondent herein, is right in reversing the order of the trial court refusing the injunction. The appellate court based on the provisions of law and fact granted the injunction. No citizen has right to claim and/or obstruct the free

access and right of way specially on the Government land. Admittedly, the present suit was filed by the plaintiff / respondent and not by the defendants / appellants. The right of the defendants / appellants of using the portion of the Government land which is in his possession, if any, in no way disturbs by the judgment and order. Similarly, the right of plaintiff / respondent also shall not be disturbed basically by use of that Government land.

5. Taking all this into account, there is no perversity in the impugned judgment and order passed by the appellate court. It is within the framework of law and record. There is no substantial question of law as such is raised. Second appeal is, accordingly, dismissed and is hereby disposed of.

Sd/-

(ANOOP V. MOHTA,J.)